

in general, and Sections 6(b)(5) and 6(b)(6), in particular, in that it is designed to promote just and equitable principles of trade, to protect investors and the public interest, and to provide that members of the Exchange are appropriately disciplined for violations of Exchange rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-PSE-95-27

and should be submitted by December 7, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-36468; International Series Release No. 882; File No. SR-PHLX-95-52]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1 and 2 to Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Customized Foreign Currency Options With Customized Expiration Dates

November 8, 1995

I. Introduction

On July 27, 1995, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to provide for the trading of customized foreign currency options ("Customized FCOs") with customized expiration dates.

The proposed rule change appeared in the Federal Register on August 29, 1995.³ No comment letters were received on the proposed rule change. The Exchange subsequently filed Amendment No. 1 to proposal on September 14, 1995⁴ and Amendment No. 2 on November 7, 1995.⁵ This order

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1994).

³ See Securities Exchange Act Release No. 36131 (August 22, 1995), 60 FR 44927 (August 29, 1995).

⁴ Amendment No. 1 to the proposed rule change: (1) Revises the language of Exchange Rule 1069(a) to specify that a FCO with a customized expiration date may only be created with an expiration date of up to two years from the date of its issuance; and (2) provides that with respect to FCOs with customized expiration dates, Exchange member organizations will be required to utilize a pro-rata method of assignment for its customers. This procedure is set forth in new subsection (k) to Rule 1069. See letter from Michele R. Weisbaum, Associate General Counsel, PHLX, to Michael Walinskas, Branch Chief, Office of Market Supervision ("OMS"), Division of Market Regulation ("Division"), Commission, dated September 14, 1995 ("Amendment No. 1").

⁵ Amendment No. 2 to the proposed rule change establishes in new subsection (iv) to PHLX Rule 1000(b)(21) when a Customized expiration date FCO may expire. According to the PHLX's amendment, a Customized expiration date FCO will expire at 10:15 a.m., Philadelphia time, on its

approves the Exchange's proposal, as amended.

II. Background and Description

Pursuant to the proposed rule change, the PHLX would be able to offer its FCO participants the ability to trade Customized FCOs⁶ with non-standardized expiration dates. In effect, the proposal adds an additional term, "expiration date," that can be tailored on a Customized FCO transaction. At present, pursuant to Exchange Rule 1012, FCO users can only trade Customized FCO contracts with expiration dates corresponding to those for non-Customized FCOs. Thus, Customized FCO contracts may only be traded with mid-month and end-of-month expirations at 1, 2, 3, 6, 9, 12, 18, and 24 months. The Exchange's proposal therefore revises this previously-standard term by allowing Customized FCO contracts to expire on any business day (excluding Exchange holidays, e.g., Memorial Day, and Exchange-designated holidays, e.g., Boxing Day) in any month up to two years from the date of its issuance. The Exchange represents that institutions and multinational corporations will thus be able to hedge their exchange rate exposure more accurately by trading a contract that expires on a trading day of their choosing.

Under the PHLX's proposal, any Customized FCO contract with a customized expiration date ("Customized expiration date FCOs") will cease trading at 9:00 a.m., Philadelphia time, on its expiration date, and will expire at 10:15 a.m., Philadelphia time, on that date. Customized FCOs with expiration dates established pursuant to PHLX Rule 1012 (i.e., Customized FCOs with expiration dates corresponding to the expiration dates for non-Customized FCOs), however, will not follow this procedure. Instead, maintaining current practice,

designated date provided that such date is not longer than two years from its date of issuance and is an Exchange business date (excluding regular mid-month and end of month expiration dates and days deemed invalid by the Exchange, such as Exchange holidays and Exchange-designated holidays). See letter from Michele R. Weisbaum, Associate General Counsel, PHLX, to Michael Walinskas, Branch Chief, OMS, Division, Commission, dated November 7, 1995 ("Amendment No. 2").

⁶ Users of FCOs have been able to trade Customized FCOs on the PHLX since November 1994. See Securities Exchange Act Release No. 34925 (November 1, 1994), 59 FR 55720 (November 8, 1994) (order approving File No. SR-PHLX-94-18) ("Securities Exchange Act Release No. 34925"). Through this mechanism, participants in the PHLX's Customized FCO market have the ability to customize their strike price and quotation method, and may choose any underlying and base currency combination from all Exchange-listed currencies.

these option contracts will cease trading at 2:30 p.m., Philadelphia time, on their expiration date, and expire at 11:59 p.m., Philadelphia time, on the same date, even if intentionally or unintentionally designated as a Customized FCO with a customized expiration date.

Under the PHLX's proposal, new series of Customized expiration date FCOs with "same day" expiration dates may not be opened. In contrast, new series of Customized FCOs with standardized expiration dates may be opened on their expiration dates. Previously opened positions, however, may continue to be reduced or increased on their expiration date until the end of the trading times noted above, regardless of whether the FCO contains a customized or standardized expiration date.

In all other respects, transactions in Customized FCOs containing a customized expiration date shall be treated identically to other Customized FCOs. Moreover, all existing Exchange rules and regulations, including those involving surveillance and sales practice, will be applicable to Customized expiration date FCOs.

In addition, under the PHLX's proposal, Exchange member organizations will be required to utilize a pro-rata FCO assignments. Lastly, it is contemplated that the pro-rata process being implemented by the Exchange and its member organizations will be identical to that which the Options Clearing Corporation ("OCC") will utilize for Customized expiration date FCO assignments.⁷

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b)(5) and 11A.⁸ Specifically, the Commission believes that the proposed rule change is designed to provide investors with a

tailored or customized product that may be more suitable to their investment needs. Moreover, consistent with Section 11A, the proposal should encourage fair competition among brokers and dealers and exchange markets, by allowing the PHLX to compete with the growing over-the-counter ("OTC") market in Customized FCOs. In this regard, the Commission notes, the OTC derivatives market in Customized FCOs has developed, in part, because it meets the needs of institutional investors who require increased flexibility in satisfying particular investment objectives. Accordingly, the Commission believes that the PHLX's proposal is a reasonable response to meet the demands of sophisticated portfolio managers and other institutional investors who are increasingly using the OTC market in order to satisfy their foreign currency hedging needs.

The Commission also believes that the PHLX's proposal will help to promote the maintenance of a fair and orderly FCO market, consistent with Sections 6(b)(5) and 11A, because the proposal extends the advantages of a listed, exchange market to Customized FCOs with customized expiration dates. The attributes of the Exchange's FCO market versus an OTC market include, but are not limited to, a centralized market center, transparency, and secondary market liquidity. Similarly, by having the OCC as the issuer and guarantor of Customized expiration date FCOs, concerns regarding contra-party creditworthiness and performance upon exercise are eliminated. Accordingly, the Commission believes that the PHLX's proposal to trade Customized expiration date FCOs is appropriate.

Furthermore, the PHLX's proposal offers increased flexibility to institutional investors without increasing the potential for market manipulation. As all existing Exchange rules and regulations regarding surveillance and sales practice will apply to Customized expiration date FCOs, the PHLX will be able to continue to adequately monitor Customized FCOs including Customized expiration date FCOs.⁹

Finally, the Commission finds that Customized expiration date FCOs are standardized options for purposes of Rule 9b-1 under the Act.¹⁰ The Commission notes that its determination that Customized expiration date FCOs

are standardized options for purposes of Rule 9b-1 is consistent with its initial decision regarding Customized FCOs.¹¹

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Specifically, Amendment No. 1 to the PHLX's proposal merely clarifies the proposal by adding language to Rule 1069 that specifies the necessary procedures for exercise and assignment, and, particularly, the implementation of pro-rata assignment for the product. The proposed use of pro-rata assignment was adequately described in the PHLX's proposal and was subject to a full notice and comment period.¹² As a result, the Commission does not believe that the amendment raises any new or unique regulatory issues. Accelerated approval of the amendment will therefore permit the Exchange to begin offering these products without further delay to those investors who desire an exchange-traded product that includes a customized expiration date. Accordingly, the Commission believes that it is consistent with Section 6(b)(5) of the Act to approve Amendment No. 1 to the proposal on an accelerated basis.

The Commission also finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Specifically, Amendment No. 2 to the PHLX's proposal merely serves to codify in PHLX rules the Exchange's stated proposal, that was subject to a full notice and comment period,¹³ regarding the specific time and date that Customized FCOs expire. As a result, the Commission does not believe that the amendment raises any new or unique regulatory issues. Accelerated approval of the amendment will therefore permit the Exchange to begin offering these products without further delay to those investors who desire an exchange-traded product that includes a customized expiration date. Accordingly, the Commission believes that it is consistent with Section 6(b)(5)

⁷ The Commission notes that the PHLX has recommended to its member organizations that they adopt the same methodology as the OCC in determining pro-rata assignment for Customized expiration date FCO assignments. Moreover, if an Exchange member organization elects not to utilize the OCC's pro-rata procedures, member organizations have been instructed to notify the PHLX. Telephone Conversation between Michele R. Weisbaum, Associate General Counsel, PHLX, and Michael Walinskas, Branch Chief, OMS, Division, Commission, on November 1, 1995. See also Securities Exchange Act Release No. 36453 (November 2, 1995) (order approving OCC pro-rata allocation procedures for Customized expiration date FCO assignments).

⁸ 15 U.S.C. 78f(b)(5) and 78k-1 (1988).

⁹ The Commission notes that before trading in Customized expiration date FCOs may commence, the Commission must approve a supplement to the Options Disclosure Document ("ODD") regarding this product. See SR-ODD-95-1.

¹⁰ 17 CFR 240.9b-1 (1994).

¹¹ See Securities Exchange Act Release No. 34925, *supra* note 6. The Commission also notes that it has approved the listing by certain of the options exchanges to trade flexible exchange options on broad-based indexes with customized expiration dates ("FLEX Options"). See, e.g., Securities Exchange Act Release No. 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993) (order approving listing and trading of FLEX Options on S&P 500 and 100 stock indexes).

¹² See *supra* note 3.

¹³ See *supra* note 3.

of the Act to approve Amendment No. 2 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2 to the rule proposal. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of this filing also will be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR-PHLX-95-52 and should be submitted by December 7 1995.

IV Conclusion

For the foregoing reasons, the Commission finds that the PHLX's proposal to trade Customized FCOs with customized expiration dates is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁴ that the proposed rule change (SR-PHLX-95-52), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-36467; File No. SR-PHLX-95-33]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Automatic Execution of National Over-the-Counter Index Options

November 8, 1995.

On May 11, 1995, the Philadelphia Stock Exchange, Inc. ("PHLX" or

"Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to limit the eligibility of National Over-the-Counter Index ("XOC") options for execution through the automatic execution ("AUTO-X") feature of the PHLX's Automated Options Market ("AUTOM") system. Specifically, the PHLX proposes to limit the AUTO-X eligibility of XOC options to XOC series where the bid is \$10 or less. Under the proposal, XOC series where the bid is greater than \$10 will no longer be AUTO-X eligible and will be executed manually.

Notice of the proposal appeared in the Federal Register on June 16, 1995.³ No comment letters were received on the proposed rule change.

AUTOM, which has operated on a pilot basis since 1988 and was most recently extended through December 31, 1995,⁴ is the PHLX's electronic order routing, delivery, execution and reporting system for equity and index options. AUTOM is an on-line system that allows electronic delivery of options orders from member firms

directly to the appropriate specialist on the Exchange's trading floor.

Certain orders are eligible for AUTOM's automatic execution feature, AUTO-X,⁵ which was approved as part of the AUTOM pilot program in 1990.⁶ AUTO-X orders are executed automatically at the disseminated quotation price on the Exchange and reported to the originating firm. Orders that are not eligible for AUTO-X are handled manually by the specialist.⁷

In 1991, the Commission approved a PHLX proposal to extend AUTO-X to all equity options.⁸ According to the PHLX, the Exchange initially implemented AUTO-X for all equity and index options.⁹ The PHLX now proposes to limit the use of AUTO-X for XOC orders to XOC series where the bid is at or below \$10; under the proposal, only those XOC series where the bid is at or below \$10 at the end of the trading day will be eligible for AUTO-X, effective the next trading day.¹⁰ The PHLX states that these lower-priced XOC series generally receive the most interest from public customers (i.e., "customers" who are not associated with broker-dealer organizations or subject to discretionary authorization by associated persons of broker-dealers).¹¹

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4 (1994).

³ See Securities Exchange Act Release No. 35822 (June 8, 1995), 60 FR 31334.

⁴ See Securities Exchange Act Release No. 35183 (December 30, 1994), 60 FR 2420 (January 9, 1995) (order approving File No. SR-PHLX-94-41). See also Securities Exchange Act Release Nos. 25540 (March 31, 1988), 53 FR 11390 (order approving AUTOM on a pilot basis); 25868 (June 30, 1988), 53 FR 25563 (order approving File No. SR-PHLX-88-22, extending pilot through December 31, 1988); 26354 (December 13, 1988), 53 FR 51185 (order approving File No. SR-PHLX-88-33, extending pilot program through June 30, 1989); 26522 (February 3, 1989), 54 FR 6465 (order approving File No. SR-PHLX-89-1, extending pilot through December 31, 1989); 27599 (January 9, 1990), 55 FR 1751 (order approving File No. SR-PHLX-89-03, extending pilot through June 30, 1990); 28625 (July 26, 1990), 55 FR 31274 (order approving File No. SR-PHLX-90-16, extending pilot through December 31, 1990); 28978 (March 15, 1991), 56 FR 12050 (order approving File No. SR-PHLX-90-34), extending pilot through December 31, 1991); 29662 (September 9, 1991), 56 FR 46816 (order approving File No. SR-PHLX-91-31, permitting AUTO-X orders up to 20 contracts in Duracell options only); 29782 (October 3, 1991), 56 FR 55146 (order approving File No. SR-PHLX-91-33, permitting AUTO-X for all strike prices and expiration months); 29837 (October 18, 1991), 56 FR 36496 (order approving File No. SR-PHLX-90-03, extending pilot through December 31, 1993); 32906 (September 15, 1993), 58 FR 15168 (order approving File No. SR-PHLX-92-38, permitting AUTO-X orders up to 25 contracts in all equity options); 34920 (October 31, 1994), 59 FR 55510 (November 7, 1994) (order approving File No. SR-PHLX-94-40, codifying eligibility of index options for AUTO-X); and 33405 (December 30, 1993), 59 FR 790 (order approving File No. SR-PHLX-93-57, extending pilot through December 31, 1994).

⁵ Orders for up to 500 contracts are eligible for AUTOM and, in general, public customer orders for up to 25 contracts are eligible for AUTO-X. Currently, public customer orders in XOC options for up to 20 contracts are eligible for AUTO-X. See Securities Exchange Act Release Nos. 35782 (May 30, 1995), 60 FR 30136 (June 7, 1995) (order approving File No. SR-PHLX-95-30); and 32000 (March 15, 1993), 58 FR 15168 (March 19, 1994) (order approving File No. SR-PHLX-92-38). In USTOP 100 Index options, public customer orders for up to 50 contracts are eligible for executions through AUTO-X. See Securities Exchange Act Release No. 35781 (May 30, 1995), 60 FR 30131 (June 7, 1995) (order approving File No. SR-PHLX-95-29).

⁶ See Securities Exchange Act Release No. 27599 (January 9, 1990), 55 FR 1751 (January 18, 1990) (order approving File No. SR-PHLX-89-03).

⁷ See note 14, *infra*.

⁸ See Securities Exchange Act Release No. 28978 (March 15, 1991), 56 FR 12050 (March 21, 1991) (order approving File No. SR-PHLX-90-34).

⁹ According to the PHLX, index options became AUTO-X eligible in March 1991. In October 1994, the Exchange codified its practice of using AUTO-X for index options. See Securities Exchange Act Release No. 34920 *supra* note 4.

¹⁰ The PHLX periodically will notify members that only those XOC series where the bid is at or below \$10 at the end of the trading day will be eligible for AUTO-X. Telephone conversation between Edith Hallahan, Special Counsel, Regulatory Services, PHLX, and Yvonne Fraticelli, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, on November 7, 1995.

¹¹ For example, the PHLX states that on trade date January 25, 1995, 40 XOC transactions occurred, 38 of which involved a customer. Only two of these trades involved execution prices greater than \$20, while 10 trades were above \$10 but less than \$20; 28 customer trades were below \$10. The 28

Continued

¹⁴ 15 U.S.C. 78s(b)(2) (1988).

¹⁵ 17 CFR 200.30-3(a)(12) (1994).